

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Charles Jordan,

Petitioner,

v.

Henry McMaster, S.C.
Attorney General, and Warden,

Respondents.

Civil Action No.8:09-51-CMC-BHH

**REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

The plaintiff filed this action seeking habeas relief. Before the court is the petitioner's motion for a default judgment. (Dkt. # 18.) The petitioner contends that the respondent Attorney General Henry McMaster has unnecessarily delayed this case and a default judgment should be entered and his release ordered. However, a review of this case shows that the a default judgment is not appropriate.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

Rule 55(a) of the Federal Rules of Civil Procedure provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed.R.Civ.P. 55(a). First, the undersigned notes that default judgments are not available in habeas actions. Habeas petitioners should not receive default judgment under normal circumstances. See *Bermudez v. Reid*, 733 F.2d 18, 21 (2d Cir.1984) (reasoning that "were district courts to enter default judgments without reaching the merits of the claim, it would be not the defaulting party but the public at large that would be made to suffer"). See also *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir.

1990) (“The failure to respond to claims in a petition for habeas corpus does not entitle the petitioner to a default judgment”); *Aziz v. Leferve*, 830 F.2d 184, 187 (11th Cir. 1987) (“a default judgment is not contemplated in habeas corpus cases”); *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970) (“Rule 55(a) has no application in habeas corpus cases”); *Garland v. Warden*, 2008 WL 4834597 (D.S.C. 2008)(unpublished). Moreover, the respondents are not in default as the undersigned granted the respondents an extension of time in which to file the response to habeas petition.

Based on the foregoing, it is recommended that the Petitioner’s Motion (Dkt. # 18) be DENIED.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks
United States Magistrate Judge

June 15, 2009
Greenville, South Carolina

The petitioner’s attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 10768
Greenville, South Carolina 29603

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).